

**United States Court of Appeals
For the First Circuit**

05-11431
J. Woodlock
USDC-MAB

No. 06-1159

MANDATE

JOSE RIVERA, JR.,

Petitioner, Appellant,

v.

UNITED STATES,

Respondent, Appellee.

Before

Torruella, Lynch and Howard,
Circuit Judges.

JUDGMENT

Entered: September 11, 2006

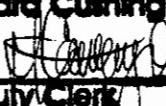
Petitioner Jose Rivera, Jr., requests a certificate of appealability ("COA") from the judgment of the United States District Court for the District of Massachusetts dismissing the habeas petition that he filed pursuant to 28 U.S.C. § 2255.

After carefully reviewing the record and petitioner's claims, we conclude that petitioner's application neither presents a substantial showing nor raises a reasonably debatable argument that petitioner was denied a constitutional right. See 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). We premise our conclusion on the reasoning contained in the district court's October 28, 2005 memorandum and order.

Accordingly, we **DENY** petitioner's application and **TERMINATE** the appeal.

**Certified and Issued as Mandate
under Fed. R. App. R. 41.**

Richard Cushing Donovan, Clerk



Deputy Clerk

Date: 11/2/06

By the Court:

Richard Cushing Donovan, Clerk.

MARGARET CARTER
By: _____
Chief Deputy Clerk.

[cc: John C. McBride, Esq., Jose Jr. Rivera, Peter K. Levitt, AUSA, Dina Michael Chaitowitz, AUSAm Jennifer H. Zacks, AUSA]